IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2518 OF 2006

IN
SUIT NO.3851 OF 2003

Bank of India ...Plaintiffs

Versus

Sun Earth Ceramics Ltd. ...Defendants

Mr. Satish Shetye, Advocate, with Ms. R. Shah i/b. M.S. Modhanwalla & Co., for the Plaintiffs.

Mr. N.A. Sani, Advocate, i/b. Maneksha & Sethna, for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 28TH AUGUST, 2006

P.C. :

1. By this Notice of Motion the Plaintiffs seeks an order to sell the leased equipments, which is the subject matter of the suit.

2. By an order dated 10th March, 2006, passed in Notice of Motion No.769 of 2004 in the above Suit D.K. Deshmukh, J., appointed the Court Receiver. The order inter-alia is as follows :-

> "The Court Receiver shall take symbolic possession of the equipments and appoint as

this agents the defendants to be in possession of the equipments on usual terms and conditions including royalty and security. However, he shall while fixing royalty take into account arrears of rent. In case the defendants do not execute the agency agreement within eight weeks from the date of communication, the Court Receiver shall proceed to take physical possession of equipments, if necessary by taking police help. In such cases the Court Receiver shall deliver possession of the equipments to the plaintiffs, also as agents of the Court Receiver, but without security and royalty. In that event, the plaintiffs shall be entitled to take out notice of motion for further reliefs."

3. Admittedly, the Defendants had declined to act as the agent of the Court Receiver. There is some dispute at this stage as to the value and the utility of the equipments. The learned counsel appearing on behalf of the Defendants agrees and undertakes that in the event of a third party being appointed as the agent of the Court Receiver and even otherwise, the

Defendants shall pay such amounts as may be demanded by the Court Receiver for the maintenance and security of the said equipment. The amount shall be paid within one week of the demand by the Court Receiver without demur in the first instance but subject to the Defendants' right to challenge the same.

4. In the circumstances, the following order is passed :-

(i) The Court Receiver, High Court, Bombay, is directed to appoint a third party as his agent in respect of the leased equipments described in Exhibits "A" and "B" to the plaint on the usual terms and conditions including as to royalty and security.

(ii) The Defendant agrees and undertakes to pay to the Court Receiver within one week of the Court Receiver demanding amounts in respect of the maintenance and security of the leased equipments.

(iii) The amount shall be paid in the first instance without demur but subject to the

Defendants' right to challenge the same.

(iv) The Court Receiver shall complete the process of appointing an agent within eight weeks from today.

(v) Liberty to the Plaintiffs to apply after the Court Receiver fixes the royalty.

(vi) It will be open to the Plaintiffs to contend by way of a fresh application that considering the amount of royalty that may be received, it is still desirable to have the equipments sold.

5. Notice of Motion is returnable in normal course.